

**245.7307-2**

(4) FAR subpart 1.7 requirements are met.

(c) Non-competitive sales shall be at fair and reasonable prices not less than those reasonably expected under competitive sale.

**245.7307-2 Justification.**

(a) Conditions justifying non-competitive sales are—

(1) Scientific equipment allocated to terminated research and development contracts with educational institutions;

(2) No acceptable bids received under an advertised competitive sale;

(3) Property value so small that anticipated proceeds would not warrant formal competitive sale;

(4) Sale to States, territories, possessions, political subdivisions thereof, or tax-supported agencies therein, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained;

(5) Specialized nature of the property would not create bidder interest;

(6) Removal of the property would reduce its value or result in disproportionate handling expenses; or

(7) Such action is essential to the Government's interests.

(b) The contracting department/agency will provide the contract administration office the sales justification and any special sales provisions when the department/agency decides to sell production equipment to the contractor by non-competitive sale.

**245.7308 Antitrust notification.**

(a) When contractor inventory with an estimated fair market value of \$3 million or more or any patents, processes, techniques, or inventions, regardless of cost, are sold or otherwise disposed of to private interests notify the Attorney General and the General Services Administration (GSA) of the proposed terms and conditions of disposal. Submit the following information to the Department of Justice and the GSA through the contract administration agency channels. Report Control Symbol DD-ACQ(AR) 1492 applies.

(1) Location and description of property (specify tonnage if scrap);

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(2) Proposed sale price (explain if the proposed purchaser was not highest bidder);

(3) Acquisition cost of property;

(4) Manner of sale, indicating whether by—

(i) Sealed bid (specify number of bidders solicited and bids received);

(ii) Auction or spot bid (state how sale was advertised); or

(iii) Negotiation (explain why property was not sold competitively);

(5) Proposed purchaser's name, address, and trade name (if any) under which proposed purchaser is doing business;

(6) If a corporation, provide state and date of incorporation, and name and address of—

(i) Each holder of 25 percent or more of the corporate stock;

(ii) Each subsidiary; and

(iii) Each company under common control with proposed purchaser;

(7) If a partnership, provide—

(i) Name and address of each partner; and

(ii) Other business connections of each partner;

(8) Nature of proposed purchaser's business (indicate whether its scope is local, statewide, regional, or national);

(9) Estimated dollar volume of sales of proposed purchaser (as of latest calendar or fiscal year);

(10) Estimated net worth of proposed purchaser; and

(11) Intended use of property.

(b) Do not dispose of property until the Attorney General determines whether the proposed disposal action would tend to create or maintain a situation inconsistent with the antitrust laws.

(c) If the Attorney General advises that the proposed disposition is inconsistent with the antitrust laws, do not continue with the proposed disposition.

(d) Under non-competitive sales, the prospective purchaser shall be informed that final consummation of the sale is subject to determination by the Attorney General.

(e) Under competitive or non-competitive sales, the purchaser is required

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to provide the information required in paragraph (a) of this subsection.

[56 FR 36448, July 31, 1991, as amended at 57 FR 42633, Sept. 15, 1992; 57 FR 53601, Nov. 12, 1992]

### **245.7309 Mandatory terms and conditions—formal invitations.**

Sale by formal invitation shall include, as a minimum, the terms and conditions in this section.

#### **245.7309-1 Inspection.**

The Bidder is invited to inspect the property prior to submitting a bid. Property will be available for inspection at the places and times specified in the Invitation. Failure to inspect property does not constitute grounds for the withdrawal of a bid after opening.

#### **245.7309-2 Condition and location of property.**

(a) Unless otherwise specifically provided in the Invitation, all property is offered for sale “as is” and “where is.” If the Invitation provides that the Contractor will load, then “where is” means f.o.b. conveyance at the point specified in the Invitation.

(b) The description is based on the best available information. However, the Contractor makes no warranty, express or implied, as to quantity, kind, character, quality, weight, size, or description of the property or its fitness for any use or purpose.

(c) Except as provided in Conditions 245.7306-8, Variations in Quantity or Weight, and 245.7306-10, Risk of Loss, no request for adjustment in price or for rescission of the sale will be considered. This is not a sale by sample.

#### **245.7309-3 Consideration of bids.**

(a) Bidder agrees that this bid is firm and irrevocable within the acceptance period specified in the Invitation (or, if not specified, not less than ten or more than 60 days).

(b) The right is reserved to reject any or all bids, to waive any technical defects in bids, and, unless otherwise specified in the offering or by the Bidder, to accept any one item or group of items in the bid. Unless the invitation provides otherwise, bids—

(1) May be on any or all items;

(2) Must be submitted on the unit basis specified for that item;

(3) Must cover the total number of units designated for that item; and

(4) Unit prices govern.

#### **245.7309-4 Payment.**

(a) Purchaser agrees to pay the full purchase price for awarded property at the prices quoted in the bid. Unless an adjustment is required pursuant to Condition 245.7306-8, Variations in Quantity or Weight, payment must be made within the time specified for removal and prior to delivery of any of the property. In the event that any adjustment is made, payment must be made immediately after such adjustment.

(b) The full purchase price, or balance if a bid deposit was required, shall be paid to the Contractor in cash or by certified check, cashier's check, traveler's check, bank draft, or postal or express money order. The Contractor is not required to extend credit to any purchaser.

(c) The Contractor reserves the right to apply any bid deposits made under this Invitation by a bidder against any amounts due under a contract awarded by the Contractor under this Invitation. If the total sum due to the contractor is less than the amount deposited with the bid, the difference shall be promptly refunded. Deposits accompanying bids which are not accepted shall be promptly returned.

#### **245.7309-5 Title.**

(a) Unless otherwise specified in the Invitation, title to property sold under this Invitation shall vest in the Purchaser when full payment is made. If the Invitation provides for loading by the Contractor, title shall not vest until payment and loading are completed.

(b) A Standard Form 97, Certificate of Release of a Motor Vehicle, (or a State certificate of title) shall be furnished for motor vehicles and motor-propelled or motor-drawn equipment requiring licensing.